

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: July 9, 2024

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JENNIFER WAGNER, on behalf of the estate of the deceased, S.R.C.,	*	
	*	PUBLISHED
	*	
Petitioner,	*	No. 23-1879V
	*	
v.	*	Special Master Nora Beth Dorsey
	*	
SECRETARY OF HEALTH AND HUMAN SERVICES,	*	Damages Award; Varicella Vaccination;
	*	Disseminated Varicella Vaccine-Strain Viral
	*	Disease; Death.
Respondent.	*	

* * * * *

Elizabeth Kyla Abramson, Maglio Christopher & Toale, P.A., Washington, DC, for Petitioner.
Dorian Hurley, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES BASED ON PROFFER¹

On October 25, 2023, Jennifer Wagner (“Petitioner”), on behalf of the estate of the deceased S.R.C., filed a petition for compensation under the National Vaccine Injury Compensation Program (“Vaccine Act” or “the Program”), 42 U.S.C. § 300aa-10 *et seq.* (2018).² Petitioner alleged that as a result of a varicella vaccine administered on January 6, 2022, S.R.C. developed disseminated varicella vaccine-strain viral disease and subsequently died on April 14, 2022. Petition at Preamble (ECF No. 1). On January 22, 2024, the undersigned issued a ruling finding Petitioner entitled to compensation. Ruling on Entitlement dated Jan. 22, 2024 (ECF No. 19).

¹ Because this Decision contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims’ website and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc> in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 to -34 (2018). All citations in this Decision to individual sections of the Vaccine Act are to 42 U.S.C. § 300aa.

On July 9, 2024, Respondent filed a Proffer on Award of Compensation (“Proffer”), attached hereto as Appendix A. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. Proffer at 2. Based on the record as a whole, the undersigned finds that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, the undersigned awards Petitioner:

- (1) A lump sum payment of \$250,000.00, which represents compensation for the statutory benefit for a vaccine-related death, and**
- (2) A lump sum payment of \$250,000.00, which represents compensation for past pain and suffering.**

Proffer at 2. This amount represents all elements of compensation to which Petitioner is entitled under § 15(a). Id. Therefore, Petitioner shall be awarded a lump sum payment of \$500,000.00 in the form of a check payable to Petitioner, Jennifer Wagner, as personal representative of the Estate of S.R.C.³

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court **SHALL ENTER JUDGMENT** herewith.⁴

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Special Master

³ The Proffer states, “If for some reason [P]etitioner is not authorized by a court of competent jurisdiction to serve as the personal representative of the Estate of S.R.C. at the time a payment pursuant to this Proffer is to be made, then any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as personal representative of the Estate of S.R.C. upon submission of written documentation of such appointment to the Secretary.” Proffer at 2 n.3.

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties’ joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

JENNIFER WAGNER, on behalf of the estate)	
of the deceased, S.R.C.,)	
)	
Petitioner,)	No. 23-1879V
)	Special Master Dorsey
v.)	ECF
)	
SECRETARY OF HEALTH AND HUMAN)	
SERVICES,)	
)	
Respondent.)	
)	

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On October 25, 2023, Jennifer Wagner filed a petition for compensation (“Petition”) under the National Childhood Vaccine Injury Act of 1986, *as amended*, 42 U.S.C. §§ 300aa-1 *et seq.* (“Vaccine Act”), on behalf of the estate of her deceased son, S.R.C.¹ Petitioner alleged that S.R.C.’s receipt of a varicella vaccination on January 6, 2022, caused him to suffer disseminated varicella vaccine-strain viral disease, resulting in his death on April 14, 2022. *See* Petition at Preamble.

On January 22, 2024, respondent filed a Rule 4(c) Report, conceding that petitioner’s claim meets the Table criteria for a disseminated varicella vaccine-strain viral disease injury, and that S.R.C.’s death was vaccine related. Also on January 22, 2024, the Court issued a Ruling on Entitlement finding petitioner entitled to compensation under the Vaccine Act.

¹ Ms. Wagner filed documentation on June 12, 2024, establishing that on March 5, 2024, she was appointed personal representative of S.R.C.’s Estate under the laws of the State of Colorado. *See* Exhibit 13. All references to petitioner herein refer solely to Jennifer Wagner in her representative capacity as the personal representative of the Estate of S.R.C.

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded the following, and requests that the Special Master's decision and the Court's judgment award:

- a. a lump sum payment of **\$250,000.00**, which represents compensation for the statutory benefit for a vaccine-related death, and
- b. a lump sum payment of **\$250,000.00**, which represents compensation for past pain and suffering.

These amounts represent all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a)(2) and (a)(4).² Petitioner agrees.

II. Form of the Award

Respondent recommends that petitioner be awarded a lump sum payment of **\$500,000.00**, in the form of a check payable to petitioner, Jennifer Wagner, as personal representative of the Estate of S.R.C.³ Petitioner agrees.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

² This Proffer does not include attorneys' fees and costs, which the parties intend to address after a Damages Decision is issued.

³ If for some reason petitioner is not authorized by a court of competent jurisdiction to serve as the personal representative of the Estate of S.R.C. at the time a payment pursuant to this Proffer is to be made, then any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as personal representative of the Estate of S.R.C. upon submission of written documentation of such appointment to the Secretary.

LARA A. ENGLUND
Assistant Director
Torts Branch, Civil Division

/s/ Dorian Hurley
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DATED: July 9, 2024